

### **Remarks/Arguments**

Claims 1 to 22 are pending. Claims 1 and 15 to 17 have been amended. Claim 15 has been cancelled. New Claims 21 and 22 have been added.

The Office Action stated that applicants election of species of the halophytes species in the reply filed on 04/21/2006 is acknowledged; and that, because applicant did not distinctly and specifically point out that supposed errors in the restriction requirement, the election has been treated as an election without traverse.

The Office Action stated that the following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 to 20 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant traverses this statement.

The Office Action stated that Claim 1 recites the terms "small" and "substantially". Applicant disagrees with this statement. The Office Action stated that no objective criterion is provided in the specification or claim to apprise one of skill in the art of the meaning "small" or "substantially." Applicant disagrees with this statement. The Office Action stated that there is no definition of "small" or "substantially" in the claims or specification to apprise one of skill in the art with

unambiguous meaning of the claimed invention. Applicant disagrees with this statement.

The specification at page 10, lines 12 to 17, and page 16, lines 3 to 9, defines what is sufficient acid to achieve the claimed result. The acid amount is that which is sufficient to achieve the new recited pH range of the aqueous solution.

The reduction of the mineral content has been defined as the end level range of ash content. Support is found on page 10, lines 18 to 22 and page 12, lines 9 to 12.

The Office Action stated that, therefore, applicant may overcome this rejection by clearly delineating the metes and bonds of what are “small” or “substantially”. This has been done in another way.

The Office Action stated that all other claims depend directly or indirectly from rejected claims and are, therefore, also rejected under 35 U.S.C. 112, second paragraph for the reasons set forth above. This is incorrect as original dependent Claim 9 defined the amount of acid by a pH range.

This rejection should be withdrawn.

The Office Action stated that the following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless—

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The Office Action stated that the following is a quotation of 35 U.S.C.

103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 to 20 have been rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Park (Derwent-ACC-No: 2002-563565, see the abstract). Applicants traverse these rejections.

Original dependent Claims 10 and 11 and new Claim 22 are drawn to inorganic acids, hence Park cannot anticipate such claims.

Original Claim 9 recites a pH range for the aqueous solution, hence Park cannot anticipate such claim.

Park does not disclose separating its halophyte from aqueous composition, hence Park cannot anticipate original Claims 15 (now cancelled), 16, 17 and 19.

Park does not anticipate original Claim 1 because Park does not disclose substantially reducing the mineral content of the composition of Park.

Claim 1 has been amended to include addition of sufficient acid to provide an aqueous solution having a pH of 2.0 to 4.0, and dissolving the mineral to 5 to 15 percent. Neither claim recitation or limitation is disclosed by Park. Claim 1 also has been amended to separate the treated sea algae/halophyte from the aqueous solution containing the dissolved mineral. Park does not anticipate amended Claim 1 or any other claim.

Applicant's Claim 1 involves a process of treating sea algae and/or halophytes, that includes soaking the sea algae/halophytes in an aqueous solution containing a sufficient amount of acid to provide the aqueous solution with a pH of 2.0 to 4.0, for a sufficient length of time to substantially reduce mineral content of the sea algae/halophyte to about 5 to about 15 weight percent by dissolving mineral from said sea algae/halophyte, the mineral content of the sea algae/halophyte being expressed on the basis of the total ash content of the sea algae/halophyte in a dry state. The treated sea algae/halophyte is separated from the aqueous solution that contains the dissolved mineral removed from the sea algae/halophyte.

Park does not disclose or suggest applicant's claimed invention.

The Office Action stated that, although very unclear as drafted, applicant claims a process of treating halophytes comprising soaking the halophytes in an aqueous solution containing acid for a sufficient length of time to produce a food and/or feed of a halophyte of reduced mineral content is apparently claimed. This

is not a correct statement of even applicant's original Claim 1 – it recites that the aqueous solution contains a small amount of acid, that with a sufficient length of time, substantially reduces the mineral content of the sea algae/halophyte.

Original Claim 1 and amended Claim 1 are not taught or suggested by Park.

The Office Action stated that Part anticipates the claimed invention because Park teaches (see abstract) a feed of a halophyte composition (i.e., the halophyte is *salicornia herbacea* whereas the *salicornia herbacea* is a drink which is utilized for medicinal purposes and/or for nourishment purposes for a subject, and please note that a feed is defined as to supply a subject with nourishment) comprising the extraction of a halophyte (i.e., *salicornia herbacea*) by placing the halophyte within an aqueous solution (i.e., water) containing acid (i.e., citric acid) whereas Park's same extraction process as the claimed invention's extraction process would inherently produce the claimed invention's feed halophyte composition with reduced mineral content. This is not a correct statement of the disclosure of Park.

Park washes a specific halophyte; this step does not extract mineral from the specific halophyte, and is not suggestive thereof. Park does not disclose or suggest washing with an acid solution of any strength.

Park continues by "juicing" the washed specific halophyte. There is no disclosure in Park that an acid solution is used in the "juicing" of Park. Webster's Ninth New Collegiate Dictionary, (1989), states:

"juice vt juiced; juicing... 2: to extract the juice of" [Page 654]

Park discloses producing a medicinal drink of a specific halophyte.

Park does not treat with the specific halophyte (solid) with an acid solution. Park treats the liquid juice extract with a solution containing a very little acid.

The extractate claimed in applicant's claimed invention is discarded. Applicant's solid plant material, minus the discarded extractate containing the unwanted mineral matter, is then a more useful nutritional material.

Citric acid is a very weak organic acid and is only used in the amount of 0.01 percent.

Park added 0.01 percent of citric acid plus oligosaccharide and lots of water to 0.82 to 2.2 percent of the specific halophyte extract (juice) [to form a medicinal drink]. To the contrary, applicant discards its aqueous solution extractant. Park directs away from applicant's claimed invention.

Park does not specify washing in an acid solution. In fact, the specified 0.01 percent of citric acid of Park would have only a minor or even an undetectable effect on the pH of the solution. Citric acid is generally used as a contributor to the flavor or a flavor enhancer of a comestible. It is known as a weak organic acid.

The Office Action stated that, however, while Park does not expressly teach all the claimed invention's extraction methods, it appears that Park's feed halophyte composition and the claimed composition invention's feed halophyte composition are the same because both references utilize the same extraction process of placing a halophyte within an aqueous solution containing an acid to inherently produce the same feed product, absent clear and convincing evidence to the opposite. Applicant traverses this statement. As shown above, the two

processes are not the same, and are quite different in steps and result. Park makes applicant's claimed invention unobvious.

The Office Action stated that conventional working conditions therein (i.e., the claimed invention's extraction method's the includes the halophyte is utilized in its dried and/or wet state, the length of time and the temperature, and the substitution of one functionally equivalent acid for another and the separation step to aid in reducing the mineral content) is deemed merely a matter of judicial selection and routine optimization which is well within the purview of the skilled artisan. Applicant traverses this statement as being mere hindsight and based on speculation. Furthermore, "the skilled artisan" has nothing to do with Section 103(a).

The Office Action stated that, accordingly, the invention as a whole is prima facie obvious to one of ordinary skill in the art the time the invention was made, especially in the absence of evidence to the contrary. Applicant traverses this statement. The Examiner has not determined the level of ordinary skill in the art, which is required by the Supreme Court and Patent Office policy. The Examiner, therefore, does not know what would be obvious to one ordinarily skilled in the art. The Examiner has not factually established in the record a showing of prima facie obviousness.

These rejections should be withdrawn.

Reconsideration, reexamination and allowance of the claims are requested.

Respectfully submitted,

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Date

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